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8

9 IN THE UNITED STATES BANKRUPTCY COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA
11 FRESNO DIVISION
12

13 In re	Case No. 17-13797
14 Tulare Local Healthcare District,	Chapter 9
15 Debtor,	DC No.: WJH-4
16	MEMORANDUM OF POINTS AND
17 Tax ID #: 94-6002897	AUTHORITIES IN SUPPORT OF
18 Address: 869 N. Cherry Street	DEPARTMENT OF HEALTH CARE
19 Tulare, CA 93274	SERVICES' MOTION FOR LEAVE TO
	FILE AMENDED PROOF OF CLAIM
	197
20	Date: May 27, 2020
21	Time: 9:30 a.m.
22	Place: 2500 Tulare Street
	Fresno, CA 93721
	Courtroom 13
23	Judge: The Honorable René Lastreto, II

24 INTRODUCTION

25 Pursuant to Federal Rule of Bankruptcy Procedure 7015 and Federal Rule of Civil
26 Procedure 15, Creditor Department of Health Care Services (DHCS) moves for leave to amend its
27 Proof of Claim (POC) 197, filed against Debtor Tulare Local Healthcare District on April 6,
28 2018, to add greater particularity, including an estimated value of the claim. Amended POC 197

1 is filed herewith as Exhibit A. Leave to amend should be granted because: (1) the Ninth Circuit
2 has a liberal policy favoring amendment; (2) the amendment simply provides more information
3 about the claim and does not constitute a new claim; (3) DHCS has not acted in bad faith or with
4 unreasonable delay; and (4) the amendment would not cause undue prejudice to Debtor.

5 ARGUMENT

6 I. The Liberal Standard for Amending a Proof of Claim.

7 The Ninth Circuit has “a long established liberal policy that permits amendments to a proof
8 of claim.” *In re Roberts Farms*, 980 F.2d 1248, 1251 (9th Cir. 1992) (citations omitted). A
9 creditor can amend a claim after the bar date. *Sambo’s Restaurants, Inc. v. Wheeler (In re*
10 *Sambo’s Restaurants, Inc.)*, 754 F.2d 811, 816-17 (9th Cir. 1985).

11 In the absence of prejudice, the Court should freely allow amendments that relate back to
12 the filing of the original, to cure a defect, or describe the claim with greater particularity.
13 *Sambo’s Restaurants, Inc.*, 754 F.2d at 816-17. *See also Goichman v. Bloom (In re Bloom)*, 875
14 F.2d 224, 227 (9th Cir. 1989).

15 In determining whether an amendment is allowable, Federal Rule of Civil Procedure 15(c)
16 provides a useful analogy. *State of California Board of Equalization v. Ulrich (In re Solari)*, 63
17 Bankr. 115, 117 (Bankr. 9th Cir. 1986). Under Rule 15(c), an amended pleading relates back to
18 the original when the amendment arises out of the same conduct, transaction, or occurrence. *Id.*
19 *See also In re: Bajac Construction Co.*, 100 Bankr. 524, 525 (Bankr. E.D. Cal. 1989). A claim
20 filed after the bar date qualifies as an amendment to a timely claim, if both are of the same
21 generic origin. *Id.*

22 “Whether the opposing party would be unduly prejudiced by the amendment” depends on
23 elements such as “bad faith or unreasonable delay in filing the amendment, impact on other
24 claimants, reliance by the debtor or other creditors, and change of the debtor’s position.” *In re*
25 *Roberts Farms*, 980 F.2d 1248, 1251 (9th Cir. 1992.)

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2 **II. DHCS' Amended Proof of Claim 197 Meets the Ninth Circuit's Liberal Standard of Amendment.**

3 Here, DHCS is not attempting to sneak in a phantom claim after the April 10, 2018 bar
4 date. Instead, DHCS simply moves to amend its original proof of claim, filed on April 6, 2018, to
5 add more particularity, including: (1) an explanation about why DHCS was unable to include an
6 estimated value in the original claim; (2) the current but incomplete estimated claim value of
7 \$5,520,423.33; and (3) the methodology for that estimate. This information is set forth in Exhibit
8 A-1, the Amended Declaration of Shiela Mendiola in support of Amended POC 197, as follows:

9 Ms. Mendiola has been employed by DHCS as the Section Chief of the Medi-Cal
10 Supplemental Payment Section since January 2015. Exhibit A-1, Mendiola Amended Declaration
11 in Support of Amended POC 197, ¶ 1. In that position, she oversees supplemental payment
12 programs for the Safety Net Financing Division and is a custodian of records for the
13 Supplemental Reimbursement for Public Outpatient Hospital Services Program. *Id.*

14 In her amended declaration, Ms. Mendiola explains that California Welfare and Institutions
15 Code section 14105.96 provides supplemental reimbursements under California's Medi-Cal
16 (Medicaid) program for an outpatient department of a general acute care hospital that is owned or
17 operated by a city, county, city and county, the University of California, or health care district,
18 which meets specified requirements and provides outpatient hospital services to Medi-Cal
19 beneficiaries. Exhibit A-1, Mendiola Amended Declaration in Support of Amended POC 197, ¶
20 2. Supplemental reimbursement under the Supplemental Reimbursement for Public Outpatient
21 Hospital Services Program reimburses for hospital costs that are in excess of the payments the
22 hospital receives for outpatient hospital services from any source of Medi-Cal reimbursement. *Id.*

23 Interim payments are calculated using cost to charge ratios from cost reports, as well as
24 Medi-Cal Fee-for-Service (FFS) charges and payments from provider submitted claims. Exhibit
25 A-1, Mendiola Amended Declaration in Support of Amended POC 197, ¶ 3. Final reconciliations
26 require cost to charge ratios to be reconciled to audited cost reports and Medi-Cal FFS charges,
27 and payments reconciled to data from DHCS' internal Medicaid Management Information
28

1 System (MMIS). *Id.* California State Medicaid Plan, Attachment 4.19-B, pp. 47-48. During
2 final reconciliations, adjustments are made for underpayments and overpayments. *Id.*

3 When DHCS filed its original POC 197 on April 6, 2018, it could not include a specific
4 amount for its claim because final reconciliations were still pending for Fiscal Year (FY) 2002-03
5 through the bankruptcy filing in September 2017. Exhibit A-1, Mendiola Amended Declaration
6 in Support of Amended POC 197, ¶ 4.

7 Since April 6, 2018, DHCS has audited the cost reports for FY 2002-03 through FY 2015-
8 16, using the aforementioned methodology, and can now estimate the final reconciliation amount
9 for that period to be an overpayment of \$5,520,423.33. Exhibit A-1, Mendiola Amended
10 Declaration in Support of Amended POC 197, ¶ 5. Attached as Exhibit A-1(a) is an Excel
11 Spreadsheet itemizing the interim payment and estimated overpayment for each fiscal year from
12 2002-2016, based on the aforementioned methodology, and the total overpayment for that time
13 period of \$5,520,423.33. However, audited cost reports for FY 2016-17 are not yet available, so
14 FY 2016-17 final reconciliation amounts still cannot be estimated. *Id.* Because DHCS meets the
15 liberal standard of amendment, it should be granted leave to amend POC 197.

16 **III. DHCS Did Not Act in Bad Faith or Cause Unreasonable Delay.**

17 The aforementioned explanation of why DHCS could not include a specific claim amount
18 in the original POC 197, and the fact that the fiscal reconciliation process is still ongoing,
19 demonstrate that DHCS did not act in bad faith or cause unreasonable delay. The Court should
20 therefore grant DHCS leave to amend POC 197 for this additional reason.

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22 **IV. Granting DHCS Leave to File An Amended POC 197 Would Not Cause Undue
Prejudice to Debtor.**

23 The Court is still considering creditor claims and Debtor cannot show that it relied on any
24 representation by DHCS that POC 197 has no value. On the contrary, paragraph 4 of Ms.
25 Mendiola's original declaration, attached as Exhibit A to the original POC 197, explicitly states
26 that "final reconciliations are still pending for this provider for all program years beginning in
27 State Fiscal Year 2002-03 until the bankruptcy filing in September 2017."

CONCLUSION

Memo. of P&As in Supp. of DHCS' Motion to File Amended POC 197 (17-13797)